IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.401 OF 2006

Sadashiv Mahadeo Swami & Ors. ...Appellants
Vs.
Pilubai Rudrayya Swami & Anr. ...Respondents

Mr V.B. Rajure for the Appellants.
Mr S.R. Ganbavale for the Respondent No.2.

CORAM : A. S. OKA, J.
DATE : APRIL 25, 2006.

P.C.:

1. Heard Shri Rajure appearing for the Appellants. The Appellants are the original Plaintiffs. The prayer in the suit filed by the Appellants is for declaration that they have become owners of the suit property by adverse possession. The plea of adverse possession has been negatived by both the courts below. Shri Rajure submitted that the Appellate Court has committed an error by relying upon alleged admission of the father of the Appellants in his statement recorded by the City Survey Officer. He submitted that the Revenue authorities had no jurisdiction to decide the issue of title and therefore, the said statement recorded by the City Survey Officer is irrelevant for deciding the plea of adverse possession. He submitted that long standing possession of the Appellants has been established. He

relied upon public notice published by the father of the Appellants in a newspaper. The said notice was published in the year 1977. Placing reliance on the decision of the Apex Court in the case of Vasantiben Prahladji Nayak & Ors. Vs. Somnath Muljibhai Nayak & Ors. (AIR 2004 Supreme Court, Page 1893) he submitted that plea of adverse possession was established by the Appellants.

2. I have considered the submissions. The statement of the father of the Appellants Mahadeo recorded by the City Survey Officer is only one piece of evidence which is considered by the Appellate Court. In the said statement, father of the Appellants stated that the Respondent No.1 was not available. He stated that if the Respondent No.1 becomes available, he was ready and willing to re-transfer the suit property in favour of the Respondent No.1. Apart from the said statement the oral and documentary evidence on record has been considered by both the courts below.

3. Perusal of the averments made in the plaint shows that the averments are basically as regards long

standing possession of the Appellants. There are no averments to show that the possession was hostile to the knowledge of the Respondent No.1. The public notice published by the father of the Appellants cannot establish the hostile possession to the knowledge of the Respondent No.1.

4. After appreciating the oral and documentary evidence on record, courts below have negatived plea of adverse possession. No interference is called for in the Second Appeal in the concurrent findings of fact. Second Appeal is dismissed. No orders as to costs.

JUDGE